

**SUMMARIZED MINUTES
SCOTTSDALE CITY COUNCIL
TUESDAY, OCTOBER 4, 2005**



**CITY HALL KIVA
3939 N. DRINKWATER BOULEVARD
SCOTTSDALE, AZ 85251**

CALL TO ORDER

Mayor Manross called to order a Regular Meeting of the Scottsdale City Council on Tuesday, October 4, 2005 in the Kiva, City Hall, at 5:12 P.M.

ROLL CALL

Present: Mayor Mary Manross
Vice Mayor Ron McCullagh
Council Members Betty Drake, Wayne Ecton, W.J. "Jim" Lane,
Robert Littlefield, and Kevin Osterman

Also Present: City Manager Jan Dolan
Acting City Attorney Deborah Robberson
City Clerk Carolyn Jagger

PLEDGE OF ALLEGIANCE - Scottsdale Police Department Explorer Post No. 908

INVOCATION - Pastor Ray Barton, Scottsdale Bible Church

PRESENTATIONS/INFORMATION UPDATES

- Presentation of Fire Department Plaques to the City Council
Fire Chief Willie McDonald provided a brief overview of Fire Department activities since formation in July; presented plaques to Councilmembers for their support during the transition; and announced Fire Prevention Week (October 2 through 8, 2005) and Public Safety Day on October 21, 2005.
- McDowell Sonoran Preserve Month Proclamation
Mayor Manross proclaimed October as McDowell Sonoran Preserve Month, and recognized members of the Sunrise Area Stewardship Team in the audience. Steward B.J. Tatro described the Pathfinder Program.
- Bureau of Reclamation Award Presentation
Carol Irwin of the Bureau of Reclamation awarded Tom Beat the Department of Interior Award of Excellence in Corporate Stewardship for his efforts in creating a special partnership between the Bureau and the City.

NOTE IN ACCORDANCE WITH PROVISIONS OF THE ARIZONA REVISED STATUTES THE SUMMARIZED MINUTES OF CITY COUNCIL MEETINGS ARE NOT VERBATIM TRANSCRIPTS. ONLY THE ACTIONS TAKEN AND DISCUSSION APPEARING WITH QUOTATION MARKS ARE VERBATIM. DIGITAL RECORDINGS OF CITY COUNCIL MEETINGS ARE ON FILE IN THE CITY CLERK'S OFFICE.

APPOINTMENTS

- Reappointment of Associate City Judge Joseph Olcavage

COUNCILMAN OSTERMAN MOVED TO REAPPOINT ASSOCIATE CITY JUDGE JOSEPH OLCAVAGE TO A TWO-YEAR TERM COMMENCING OCTOBER 7, 2005. COUNCILMAN LANE SECONDED THE MOTION, WHICH CARRIED 7-0.

- Appointment of Citizen Code of Ethics Task Force

Each Councilmember appointed a citizen to this task force as follows:

Art DeCabooter, Chairman	by Mayor Manross
Jim Derouin	by Councilman Lane
Margaret Dunn	by Councilmember Drake
Jim Bruner	by Councilman Ecton
Rita Saunders-Hawarnek	by Councilman Littlefield
Dewey Schade	by Vice Mayor McCullagh
Ned O'Hearn	by Councilman Osterman

BOARDS, COMMISSIONS, AND TASK FORCE NOMINATIONS (Note: Interviews and Appointments Scheduled for October 18, 2005)

Building Advisory Board of Appeals (1 opening) – Nominated: Bucky Haver

Environmental Quality Advisory Board (2 openings) – Nominated: Robert Annan, Michele Cohen, and Jimmy Leung

Judicial Appointments Advisory Board (1 Scottsdale Bar Representative, 1 State Court Representative, 1 Citizen Representative) – Nominated for the Citizen Representative: John Corey and Bernard Katz. The Scottsdale Bar Association submitted the name of Attorney Paul Rybarsck for City Council consideration. Council will consider officially acknowledging the Arizona Supreme Court Chief Justice's appointment of Judge Ronald Reinstein on October 18, 2005.

Loss Trust Fund Board (2 openings) – Nominated: Les Boyce, Dean Coughenour, and Edward Foster

Neighborhood Enhancement Commission (1 opening) – Nominated: Robert Bretz, Andrew Bryant, Lydia Dross, and Aaron Kern

PUBLIC COMMENT

Roland Kueffner, 3326 N 85th Pl, 85251, presented conceptual and post-construction views of the water tanks on Cattletrack, and claimed the water company had mislead everyone. He urged the Council to confront the water company with these findings.

George Knowlton, 8701 E Valley View Rd, 85250, expressed his disappointment in the way the Ethics Panel was formed, calling the process unethical.

Leon Spiro, 7814 E Oberlin Wy, 85262, objected to the City's handling of GLO patent easements. Mr. Spiro wondered whether or not a service fee paid by one property owner would have to be paid again by a new owner. Mr. Spiro requested a document outlining Mr. John Aleo's opinion on GLO patent easements be placed in the minutes (attached).

PUBLIC COMMENT (Continued)

Mike Aloisi, 6846 N 72nd Pl, 85250, requested consideration of his proposal to create a Police Commission, which he submitted to the Council several months ago. Mr. Aloisi also discussed the importance of respecting police officers.

Larry Heath, 8608 E Gail Rd, 85260, mentioned seeing differences in ball field maintenance throughout Scottsdale, and urged Council to hire more personnel to maintain all fields in an equal manner.

MINUTES

SPECIAL MEETING
September 13, 2005

WORK STUDY SESSION
September 13, 2005

VICE MAYOR MCCULLAGH MOVED FOR APPROVAL OF THE SPECIAL AND WORK STUDY SESSION MINUTES OF SEPTEMBER 13, 2005. COUNCILMAN OSTERMAN SECONDED THE MOTION, WHICH CARRIED 7-0.

Consent Agenda Items 1 - 19

1. **Buster McNutty's Bar & Grill (Restaurant) Liquor License**
Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 12 (restaurant) liquor license.
Location: 2323 N. Scottsdale Road
Reference: 46-LL-2005
Staff Contacts: Frank Gray, Planning and Development Services General Manager, 480-312-2890, frgray@scottsdaleaz.gov; Connie Padian, Customer Service Chief Officer, 480-312-2664, cpadian@scottsdaleaz.gov
2. **Fry's Marketplace #673 (Liquor Store) Liquor License**
Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a location transfer of a series 9 (liquor store) liquor license.
Location: 20427 N. Hayden Road
Reference: 47-LL-2005
Staff Contacts: Frank Gray, Planning and Development Services General Manager, 480-312-2890, frgray@scottsdaleaz.gov; Connie Padian, Customer Service Chief Officer, 480-312-2664, cpadian@scottsdaleaz.gov
3. **Danny's Scottsdale & Shea (Beer and Wine Store) Liquor License**
Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 10 (beer and wine store) liquor license.
Location: 10444 N. Scottsdale Road
Reference: 48-LL-2005
Staff Contacts: Frank Gray, Planning and Development Services General Manager, 480-312-2890, frgray@scottsdaleaz.gov; Connie Padian, Customer Service Chief Officer, 480-312-2664, cpadian@scottsdaleaz.gov

4. Acapulco Bay Co. (Restaurant) Liquor License

Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 12 (restaurant) liquor license.

Location: 3030 N. 68th Street

Reference: 52-LL-2005

Staff Contacts: Frank Gray, Planning and Development Services General Manager, 480-312-2890, fgray@scottsdaleaz.gov; Connie Padian, Customer Service Chief Officer, 480-312-2664, cpadian@scottsdaleaz.gov

5. The Villas at Whisper Rock - Unit 7 Final Plat

Request: Consider final plat approval for Whisper Rock Estates Unit 7, consisting of 19 golf villas with amended development standards on 11.42 acres.

Location: North of the northeast corner of Whisper Rock Trail and Old Bridge Road

Reference: 13-PP-2004

Staff Contacts: Frank Gray, Planning and Development Services General Manager, 480-312-2890, fgray@scottsdaleaz.gov; Randy Grant, Chief Planning Officer, 480-312-7995, rgrant@scottsdaleaz.gov

6. Cantabrica Final Plat

Request: Consider final plat approval for nine residential lots with amended development standards on a 28.5+/- acre parcel.

Location: 11885 E. Jomax Road

Reference: 15-PP-2004

Staff Contacts: Frank Gray, Planning and Development Services General Manager, 480-312-2890, fgray@scottsdaleaz.gov; Randy Grant, Chief Planning Officer, 480-312-7995, rgrant@scottsdaleaz.gov

7. Desert Mountain Parcel 16 Final Plat

Request: Consider final plat approval for 40 single-family residential lots with amended development standards on a 14.92-acre parcel.

Location: 10525 E. Desert Hills Drive

Reference: 1-PP-2005

Staff Contacts: Frank Gray, Planning and Development Services General Manager, 480-312-2890, fgray@scottsdaleaz.gov; Randy Grant, Chief Planning Officer, 480-312-7995, rgrant@scottsdaleaz.gov

8. X Lofts Amended Development Standards

Requests:

1. Amend development standards to case 52-ZN-1997#3 on a 1.43 +/- acre parcel located at 7044, 7050, 7106, 7116, and 7126 E. Osborn Road with Downtown/Office Commercial Type 2 District, Planned Block Development, Downtown Overlay (D/OC-2 PBD DO) zoning.
2. Adopt Ordinance No. 3639 affirming the amended development standards.

Location: 7044, 7050, 7106, 7116, and 7126 E. Osborn Road

Reference: 52-ZN-1997#4

Staff Contacts: Frank Gray, Planning and Development Services General Manager, 480-312-2890, fgray@scottsdaleaz.gov; Randy Grant, Chief Planning Officer, 480-312-7995, rgrant@scottsdaleaz.gov

9. Engineering Services Contract for Final Design Plans for Indian Bend Road Improvements

Request: Authorize modification to Engineering Services Contract No. 2003-157-COS with URS Corporation, in the amount of \$1,274,935 to provide the final design plans and all associated contract documents for improvements to Indian Bend Road between Scottsdale and Hayden roads.

Related Policies, References: On Nov. 3, 2003 Council awarded Engineering Services Contract No. 2003-157-COS to URS Corporation for evaluating design options for Indian Bend Road between Scottsdale Road and Hayden Road.

Staff Contact: Al Dreska, Municipal Services General Manager, 480-312-5555, adreska@scottsdaleaz.gov

Staff presented several road design alternatives reviewed by the Transportation Commission for segments of Indian Bend Road, noting that public testimony was not favorable for the tunnel concept. It was also noted that public art will be incorporated into the project.

Mayor Manross opened public testimony:

Jeffrey Mangers, 6870 N 77th St, 85250, spoke in support of the tunnel concept and believes misinformation was given at the Commission hearing. He urged Council to reject the proposal and include improvements to Indian Bend Road in the upcoming major transportation study.

Mayor Manross closed public testimony.

Councilmembers were satisfied with staff's analysis, and agreed Item 9 should remain on the Consent Agenda.

10. Removal of Southeast Downtown Redevelopment Area Designation

Request: Consider Resolution No. 6735 for the removal of the Southeast Downtown Redevelopment Area Designation. The area encompasses the portion of Downtown east of Scottsdale Road to Civic Center/Drinkwater Boulevard and from Second Street to Earll, as well as the area east of Civic Center/Drinkwater Boulevard to Miller Road, south of Indian School to Osborn.

Staff Contact: David Roderique, Economic Vitality General Manager, 480-312-6701, droderique@scottsdaleaz.gov

11. FY2005/2006 Matching Event Advertising Funding

Requests:

1. Adopt the Tourism Development Commission's recommendation to authorize funds generated from bed taxes for events promotion in the total amount of \$166,907.
2. Authorize the Tourism Development Manager to execute, on behalf of the City, individual agreements with each approved event producer.
3. Approve Resolution No. 6739 authorizing funding for the FY2005/2006 Matching Event Advertising Program, and authorizing the Tourism Development Manager to execute individual agreements with each Event Producer.

Related Policies, References: Ordinance Nos. 2049, 2702, and 3577 (amended) provide for the expenditure of bed tax funds for promotion of qualified events.

Staff Contacts: Dave Roderique, Economic Vitality General Manager, 480-312-7601, droderique@scottsdaleaz.gov; Kathy Carlisle O'Connor, Economic Vitality Tourism Development Manager, 480-312-7057, kcoconnor@scottsdaleaz.gov

Staff clarified that events which do not generate bed tax, such as Parada del Sol, are included in a proposed alternate program scheduled to be presented for Council for approval on October 18, 2005.

12. Airport Terminal Building Improvements Construction Contract Award

Request: Authorize bid award No. 06PB016 in the amount of \$346,305.23 to Rampart General, LLC to construct building improvements including the expansion of second floor office space.

Staff Contact(s): Mary O'Connor, Transportation General Manager, 480-312-2334, moconnor@scottsdaleaz.gov; Scott T. Gray, Aviation Director, 480-312-7735, sgray@scottsdaleaz.gov

13. Renewal of Multi-Year Contract for on-call Airport Planning and Engineering Services

Request: Adopt Resolution No. 6736, authorizing the final one-year renewal of Contract No. 2003-161-COS with Gilbertson Associates, Inc. to provide engineering services for the Scottsdale Airport.

Related Policies, References: Contract No. 2003-161-COS; Scottsdale Procurement Code.

Staff Contact(s): Mary O'Connor, Transportation General Manager, 480-312-2334, moconnor@scottsdaleaz.gov; Scott T. Gray, Aviation Director, 480-312-7735, sgray@scottsdaleaz.gov

14. Intergovernmental Agreement (IGA) with Maricopa County for Special Transportation Services.

Request: Adopt Resolution No. 6720, authorizing a one-year IGA (#2005-142-COS) with Maricopa County for the provision of Special Transportation Services for eligible participants.

Related Policies, References:

- IGA No. 2005-142-COS
- City Procurement Code

Staff Contacts: Mary O'Connor, Transportation General Manager, 480-312-2334, moconnor@scottsdaleaz.gov; Dave Meinhart, Transportation Planning and Transit Director, 480-312-7010, dmeinhart@scottsdaleaz.gov

15. Amendment to the Scottsdale Revised Code Regarding the Use of Streets or Public Property for Parking

Request: Adopt Ordinance No. 3643 approving updates to Chapter 17, Article V of the Scottsdale Revised Code relating to the use of streets or public property for vehicle and trailer storage.

Related Policies, References: Scottsdale Revised Code Chapter 17, Article V

Staff Contacts: Judy Register, Citizen and Neighborhood Services General Manager, 480-312-2454, jregister@scottsdaleaz.gov; Raun Keagy, Neighborhood Services Director, 480-312-2373, rkeagy@scottsdaleaz.gov

Mayor Manross opened public testimony:

Leon Spiro, 7814 E Oberlin Wy, 85262, presented photos of areas in northern Scottsdale where he believes parking violations occur, and of an easement blocked by boulders. He requested Council act on these issues.

Mayor Manross closed public testimony. Two additional favorable comments on Item 15 were received via the Internet.

16. Landscape Assistance Program to Promote Neighborhood Revitalization and Water Conservation

Request: Adopt Ordinance No. 3637, creating a new division of the Water Conservation Code (Chapter 49, Article VII, of the Scottsdale Revised Code) and establishing the Landscape Assistance Program to provide installation of water conserving, low maintenance landscape at no cost to qualified low- and moderate-income homeowners.

Related Policies, References:

- Resolution No. 6687 and Ordinance No. 3621 authorizing implementation of enhanced water conservation rebate programs, July 5, 2005.
- City Council Goal: "Enhance and protect a diverse, family-oriented community where neighborhoods are safe, protected from adverse impacts, well maintained and actively revitalized."

Staff Contacts: David Mansfield, Water Resources General Manager, 480-312-5681, dmansfield@scottsdaleaz.gov; Judy Register, Citizen and Neighborhood Resources General Manager, jregister@scottsdaleaz.gov

Staff clarified that the Neighborhood Resources Division would administer the Landscape Assistance Program, along with the Water Department. The departments will share the program cost of approximately \$300,000, which has been budgeted for this fiscal year.

17. Water Oversizing Agreement with CGP-Granite Golf, LLC

Request: Authorize Water Oversizing Agreement #2005-156-COS for payment of \$150,000 to CGP-Granite Golf, LLC for the installation of 4,051 LF of 24" and 20" waterline in Rio Verde Drive between 116th Street and 122nd Street.

Related Policies, References: City of Scottsdale City Code Sec. 49-220 Oversizing, approved by City Council on December 20, 1993.

Staff Contact: David M. Mansfield, Water Resources General Manager, 480-312-5681, dmansfield@scottsdaleaz.gov

18. Expert Witness Contracts for *City of Scottsdale v. Financial Builders, Inc. et al.*

Request: Adopt Resolution Nos. 6748 and 6749, authorizing the City to enter into Contract No. 2005-152-COS with Automated Civil Services, LLC and Contract No. 2005-153-COS with EconLit, LLC to provide expert witness services to the City in *City of Scottsdale v. Financial Builders, Inc., et al.*, CV2004-015913, a Preserve condemnation case.

Related Policies, References: Resolution No. 6073, which authorized the condemnation of the 40.36 (+/-) acre parcel for the McDowell Sonoran Preserve.

Staff Contacts: Deborah Robberson, 480-312-2405, Acting City Attorney, dobberson@scottsdaleaz.gov

19. FY 2005/2006 Budget Appropriation and Cash Transfers to the Fleet Fund

Request: Approve budget appropriation and cash transfers in the amount of \$1,860,400 from the various operating department budgets to the Fleet Fund (i.e., an Internal Service Fund) budget (700-10620-54710) for the *initial* purchase of vehicles and equipment associated with new staff positions approved and included in the adopted FY 2005/06 Budget.

Staff Contacts: Craig Clifford, Chief Financial Officer, 480-312-2364, cclifford@scottsdaleaz.gov; Art Rullo, Budget Director, 480-312-2435, arullo@scottsdaleaz.gov

MOTION AND VOTE – CONSENT AGENDA

COUNCILMAN ECTON MOVED FOR APPROVAL OF CONSENT AGENDA ITEMS 1 THROUGH 19. COUNCILMAN LANE SECONDED THE MOTION, WHICH CARRIED 7-0.

Regular Agenda Items 20 - 22

20. Scenic Corridor Signage Text Amendment

Requests:

1. Consider a text amendment to the City of Scottsdale Zoning Ordinance (Ordinance No. 455) to amend Article VIII. Sign Requirements to allow smaller signs to be located near the street, to prevent the installation of taller signs currently allowed, and to make sign character and quality a consideration for the Development Review Board.
2. Adopt Ordinance No. 3641 affirming the text amendment.

Location: Citywide

Reference: 7-TA-2004

Staff Contacts: Frank Gray, Planning and Development Services General Manager, 480-312-2890, fgray@scottsdaleaz.gov; Randy Grant, Chief Planning Officer, 480-312-7995, rgrant@scottsdaleaz.gov

Staff highlighted the changes since the item was continued at the September 20, 2005 Council Meeting:

- The term “embellishments” was replaced with “design enhancements.”
- Clarification was provided regarding the effect of scenic corridor signage on corner properties that also have frontage on a non-scenic corridor intersecting street.
- Language was provided for consideration that would allow an additional two feet in height on signs for 150,000 square-foot multi-tenant developments with a 150-foot setback.
- The 150-foot setback was confirmed as natural landscape setback, not building setback.
- Internally-illuminated letters on signage will be an option for Development Review Board approval.

Council suggested clarifying that the entire 150-foot setback should be natural landscaping.

Applicant presentation:

- The Council was urged to approve the language allowing a seven-foot sign.
- The applicant argued that internally-illuminated letters are needed for better visibility at the Safeway location.
- Language was suggested to clarify the 150-foot setback criteria as, "with natural landscaping within the entire setback beyond the required scenic corridor."

Mayor Manross opened public testimony:

Bill Allison, representing Arizona Sign Association, 2575 E Camelback Rd, Phoenix 85016, supported the amendments except for those regarding non-scenic corridor frontage, which the association feels is inappropriate. He urged Council to approve the amendments allowing the seven-foot sign height and internal illumination.

Bob Vairo, Coalition of Pinnacle Peak, 10040 E Happy Valley Rd, #451, 85255, objected to the additional two feet in height, and believes signs should be allowed closer to the street and should be back-lit. He stated the focus should be on the type of signs in the scenic corridor.

Charles Hickcox, Donahue Scheiber Realty Group, 1730 E Northern Av, Phoenix, 85020, the developer of the Summit Center, hoped Council would approve the item.

Tony Nelssen, 7736 E Redbird Rd, believes five feet maximum and back-lit letters are sufficient for signage in the scenic corridor. He urged that guidelines include a glossary of terms and photographs for clarity.

Lyle Wurtz, 6510 E Palm Ln, 85257, believes southern Scottsdale was treated differently than other areas of the City in regard to signs. He stated sign ordinances were not enforced on McDowell Road, which he feels should be designated a scenic corridor.

Howard Myers, Desert Property Owners' Association, 6631 E Horned Owl Trail, 85262, said citizens had recommended the signs be small and close to the road, rather than large and set further back, and should include addresses. The citizens' draft also suggested the size of the sign be determined by the size of the development. Mr. Myers believes the additional two feet are unnecessary, and that tower signs should be eliminated in the scenic corridor.

Mayor Manross closed public testimony.

Council discussion:

- Only two sites in northern Scottsdale accommodate 150,000 square-foot, multi-tenant commercial users, and both have already been developed. The sites include the Summit site and DC Market Place.
- Some Councilmembers believe the impact of the additional height to businesses was not demonstrated, and that the decision to allow seven-foot signs may affect future zoning cases.
- The ordinance would allow signage of a maximum of five feet by churches and other small tenants, affecting about thirty-six properties.
- It was suggested that the large Safeway complex may need the additional visibility of a seven-foot sign.

- Some Councilmembers agreed that internally-illuminated signs were not in keeping with the character of the area, but would be accepted as a trade-off for the five-foot maximum height limitation.
- Support was expressed for having five-foot signs closer to the street.

MOTION AND VOTE – ITEM 20

COUNCILMEMBER DRAKE MOVED TO APPROVE ORDINANCE 3641 AND 7-TA-2004 AMENDED TO ALLOW THE MAXIMUM HEIGHT OF FIVE FEET. COUNCILMAN LITTLEFIELD SECONDED THE MOTION.

Councilman McCullagh clarified that he agreed with the motion except for the exclusion of the language allowing an additional two feet in height.

THE MOTION CARRIED 5-2, WITH VICE MAYOR MCCULLAGH AND COUNCILMAN LANE DISSENTING.

21. Scenic Roadway Designations General Plan Amendment

Requests:

1. Consider a General Plan Amendment to the Open Space and Recreation Element and the Character and Design Element regarding scenic roadways in Scottsdale. This amendment would accomplish the following:
 - Apply buffered setback/parkway designation to Bell Road.
 - Maintain Lone Mountain and Thompson Peak as buffered roadways.
 - Add “Desert Scenic Roadways” to General Plan scenic roadway hierarchy. Note: this designation is recommended for Dixileta and Jomax roads.
 - Amend the text of the General Plan to reference the Scenic Corridor Design Guidelines and future Buffered Roadway and Desert Scenic Roadway Design Guidelines.
 - Create Buffered Roadway and Desert Scenic Roadway Design Guidelines and look at additional themed streets.
2. Consider adopting Resolution No. 6716 affirming the General Plan Amendment.

References: 1-GP-2004

Staff Contacts: Frank Gray, Planning and Development Services General Manager, 480-312-2890, fgray@scottsdaleaz.gov; Randy Grant, Chief Planning Officer, 480-312-7995, rgrant@scottsdaleaz.gov

Staff reviewed the proposal as follows:

- The amendment would add a Desert Scenic Roadway category to the Character and Design Element and the Open Space and Recreation Element of the General Plan.
- At public open houses, the following roads were considered for possible Scenic Corridor designation: Bell Road, Dixileta Road, Jomax Road, Lone Mountain Road, and Thompson Peak Parkway.
- Criteria and definitions were provided for Scenic Corridor, Buffered Roadway, and Desert Scenic Roadway.

- An additional option presented for Council consideration, although never reviewed by the Planning Commission, was to apply up to a 100-foot scenic setback requirement for roads that:
 - o Are located within the recommended McDowell Sonoran Preserve study boundary or are within 100 feet of the boundary.
 - o Currently developed.
 - o Are 25 acres or larger.

Mayor Manross opened public testimony:

Jacqueline Jones, 26603 N 70th Pl, 85262, described her property bordering both Scottsdale and Phoenix, and wondered how the amendments would affect her property.

Staff clarified the amendments would not affect existing properties.

Howard Myers, Desert Property Owners' Association, 6631 E Horned Owl Trail, 85262, believes staff came up with a very clever solution to what the citizens wanted to accomplish near the Preserve. The new designation would not affect property owners but would allow them to dedicate land if they chose to. He recommended Council adopt the additional option as it was very important to preservation efforts.

Lyle Wurtz, 6510 E Palm Ln, 85257, expressed his concern that taxpayers would have to pay for some of the setbacks for the roads.

Mayor Manross said the City would not have to pay for any of the right-of-way.

Tony Nelssen, 7736 E Redbird, believes there was lack of communication at the open house regarding grandfathering properties. He supported the additional option for the 100-foot setback to protect some roads. Amended standards, increased density, and zoning changes are areas where the City has leverage to bring forward the Design Guidelines that have been created through the hard work of the community and staff.

Terrie Grasse, 26607 N 71st Pl, 85262, believes the Desert Scenic Roadway designation would be difficult to implement near her property along Jomax Road, and expressed concern about how this would affect her property.

Staff said the recommendations would not apply to her property.

Mayor Manross closed public testimony.

Councilmembers expressed concern about the misunderstanding among the citizens and believe more communication from staff was needed.

MOTION AND VOTE – ITEM 21

COUNCILMAN ECTON MOVED FOR APPROVAL OF ITEM 21, 1-GP-2004, WITH ADDITIONAL OPTION A. COUNCILMAN LITTLEFIELD SECONDED THE MOTION, WHICH CARRIED 7-0.

22. Reimbursement Resolution to Purchase 79.75-acre Parcel of Arizona State Trust Land

Requests:

1. Adopt Purchase Resolution No. 6751 for the land acquisition and associated financing and closing costs related to a 79.75-acre parcel from the Arizona State Land Trust, and declaring an emergency.
2. Adopt Reimbursement Resolution No. 6741 declaring the City's intent to advance funds not to exceed \$50,000,000 for the financing of the State Land Trust purchase, and declaring an emergency.

Related Policies, References: Resolution No. 6674, dated May 17, 2005, Adopted Financial (Debt) Policies.

Staff Contacts: Craig Clifford, Financial Services General Manager, 480-312-2364, cclifford@scottsdaleaz.gov; Roger Klingler, Assistant City Manager, 480-312-5830, rklingler@scottsdaleaz.gov

Mayor Manross opened public testimony:

Lyle Wurtz, 6510 E Palm Ln, 85257, wondered if the City was in danger of losing its AAA Bond rating, and asked who authorized the \$47M purchase.

Mayor Manross closed public testimony.

Craig Clifford, Financial Services General Manager, explained that a major bond sale is planned for November 2005, per the City's Budget and Financial Plan, which will provide for reimbursement of funds used for the purchase. Staff will meet with all credit rating agencies on October 19 and 20, 2005 to fully review the City's financial information. Mr. Clifford expects the City's bond rating to be maintained.

These funds were budgeted for FY2005/06, and the purchase was authorized by Council at the September 13, 2005 Council meeting.

MOTION AND VOTE – ITEM 22

COUNCILMAN LITTLEFIELD MOVED TO APPROVE RESOLUTIONS 6751 AND 6741 AND DECLARE AN EMERGENCY. COUNCILMAN LANE SECONDED THE MOTION, WHICH CARRIED 7-0.

PUBLIC COMMENT - None

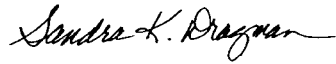
CITY MANAGER'S REPORT - None

MAYOR AND COUNCIL ITEMS - None

ADJOURNMENT

With no further business to discuss, the meeting adjourned at 8:23 P.M.

SUBMITTED BY:



Sandy Dragman
Recording Secretary

REVIEWED BY:



Carolyn Jagger
City Clerk

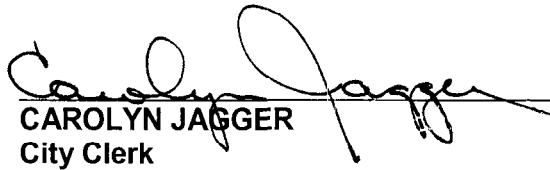
Officially approved by the City Council on October 25, 2005

CERTIFICATE

I hereby certify that the foregoing Minutes are a true and correct copy of the Minutes of the Regular Meeting of the City Council of Scottsdale, Arizona held on the 4th day of October 2005.

I further certify that the meeting was duly called and held, and that a quorum was present.

DATED this 25th day of October 2005.


CAROLYN JAGGER
City Clerk

From : John <jsaleo@msn.com>
Sent : Tuesday, March 15, 2005 9:16 AM
To : "City Council" <citycouncil@scottsdaleaz.gov>
Cc : "Jan Dolan" <jdolan@scottsdaleaz.gov>, "Joseph Bertoldo" <jbertoldo@scottsdaleaz.gov>
Subject : Policy

For some reason, staff doesn't know how to implement said plan for the Desert Foothills Character area. If staff doesn't know how to implement the plan, it makes impossible for the CC to make the right judgment call regarding same. Since the area is to be rural in nature and have a multi-use trail throughout, it would seem wise not to place obstructions in the patent easement ROW's that would hinder the plan. Therefore, it would seem prudent to have a policy in the Desert Foothills Character area of not abandoning the city's interest in any patent easements until the full implementation of the Desert Foothills Character area has been completed.

My personal experience with many staff members (not all) is that in spite of a City Council approved plan many have no understanding of how it works. If the CC is going to be continually presented with inadequate information by staff, why have the character area? Just have another vote to abandon the whole character area along with the patent easements.

It is very disappointing to help get CC members elected and find that the tail is wagging the dog, instead of the dog wagging the tail. I hope this new CC is a "junkyard dog" that demands adequate information from staff on each case presented to them. I believe that we have some very intelligent people on this new CC. I expect better decisions from it then in the past.

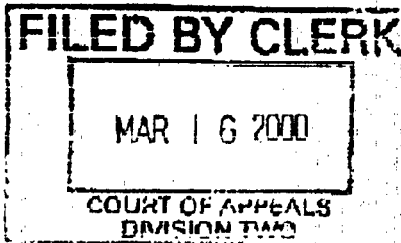
I might also mention that there are some attorneys that come to the CC representing applicants that are nothing but blatant liars. Some of these attorneys have dug some deep holes and set land mines for this city. They manipulate staff for their clients well being instead of the communities well being. I have heard that the city zoning ordinance is flexible from staff members. If it is as flexible as been demonstrated, why have one? Just accept every applicant's request. Give them whatever they want. Disregard the city code, zoning ordinance, building code, flood control, etc. for a happy face. I don't mean to be sarcastic. I realize that everyone involved is doing the best that they can, but is it adequate. Or, just mediocre.

Thank you.

PS. I suggest that you read the Bernal Opinion attached very carefully. Don't totally rely on what you have been told by others. It's self-explanatory.

John S. Alco
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

ARTHUR S. BERNAL, a married man
dealing with his sole and separate property,

Plaintiff/Appellant,

v.

RONALD LOEKS and DONNA LOEKS,
husband and wife; GARY E. McCUSKER
and KERRY McCUSKER, husband and
wife,

Defendants/Appellees.

2 CA-CV 99-0107
DEPARTMENT B

OPINION

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CV 98045814

Honorable Boyd T. Johnson, Judge

REVERSED AND REMANDED

Cruse, Firetag & Bock, P.C.
By Jules I. Firetag and Paul F. Dowdell

Phoenix
Attorneys for Plaintiff/Appellant

William F. Doran

Phoenix
Attorney for Defendants/Appellees

Mariscal, Weeks, McIntyre & Friedlander, P.A.
By Gary L. Birnbaum and Michael S. Rubin

Phoenix
Attorneys for Amicus Curiae Land Title
Association of Arizona

BRAMMER, Presiding Judge.

Arthur Bernal appeals from the trial court's order granting summary judgment in favor of the defendants/appellees Ronald and Donna Locks and Gary and Kerry McCusker on his claim that they had unlawfully denied him access to rights-of-way that had been reserved on their properties in federal land patents. We reverse.

Facts and Procedural History

¶2

We view the facts in the light most favorable to the party against whom summary judgment was entered. *United Bank of Arizona v. Allyn*, 167 Ariz. 191, 805 P.2d 1012 (App. 1990). Bernal and his neighbors the Lockses and McCuskers all own parcels of land that had originally been acquired from the federal government by land patents pursuant to the Small Tract Act, 43 U.S.C.A. §§ 682a through 682e (repealed 1976). Bernal's property is bounded on the east by the north-south trending Cedar Drive. His house faces this roadway, which provides access to his property. The back, west boundary of Bernal's property abuts the east boundary of the Lockses' property which, in turn, is bounded on the north by the McCuskers' property. The Lockses' and McCuskers' properties are bounded on the west by the north-south trending Meridian Road; this roadway provides access to their properties. Bernal's property is bisected by a north-south trending arroyo. He can access the west half of his property by using a foot bridge that spans the wash. However, he would like to keep horses on the west section, access to which can be readily gained only west of the arroyo.

¶3

Each of the patents for lots of land from which the parties' parcels were subdivided provides that the patent "is subject to a right-of-way not exceeding 33 feet in width, for roadway and public utilities purposes, to be located along" three of the lot's boundaries. Hence, each of the parties' parcels are subject to a right-of-way along two of its boundaries. These rights-of-way and others in the area form an "H" pattern, with the uprights representing Cedar Drive and

From : John <jsaleo@msn.com>
Sent : Saturday, March 5, 2005 9:26 PM
To : "City Council" <citycouncil@scottsdaleaz.gov>
CC : "Jan Dolan" <jdolan@scottsdaleaz.gov>, "Joseph Bertoldo" <jbertoldo@scottsdaleaz.gov>
Subject : March 1st SS

Attachment : image001.jpg (< 0.01 MB), BernalOpinion2CA-CV99-0107.pdf (0.39 MB), Bernal100-12(b).pdf (0.31 MB)

MIME-Version: 1.0
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X-Originating-Email: [jsaleo@msn.com]
X-Sender: jsaleo@msn.com
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I want to thank you for taking the time to reevaluate GLO federal patent easements. Each council member asked valuable pertinent questions.

After reviewing the video tape of the SS on March 1st, I believe that Mr. Gary Birnbaum gave an excellent presentation on the General Land Office and federal patent easements. He gave a clear explanation for each question that he fielded from the CC. In my opinion, the CC could not have found a better source of information.

It seems that the focus of the study session was whether or not the city had the right to revoke its interest. I do not think that there was any question that the local governing body has a right to revoke its interest. I believe that Mr. Birnbaum was clear about that.

I think that Mr. Birnbaum also alluded to the fact that private access rights and property rights did exist, but was not clear as how they were to be treated. I do believe that the private access rights and property rights are still granted under federal law and state law cannot take those rights away. Mr. Birnbaum's explanation as to the title companies' position to Mr. Littlefield was exacerbating.

Since the Bernal case was so important in Mr. Birnbaum's presentation, I thought it should be looked at closely. In the ruling signed by Judge Brammer under Discussion, the Superior Court ruled that Bernal did not have a private right. Bernal argued that he did. The Court of Appeals agreed with Bernal that he did.

In reviewing the Plat Map of Bernal's area (attached), Mr. Bernal's parcel#100-12-032C did not seem to be "land locked". He had access to his property directly from Cedar. Bernal's house faced Cedar. In this area the patent easements of 33' went around each 10 acres. Bernal had access from several patent easements along Moon Vista, Cedar, Saddle Butte, Meridian, and Canyon. He chose to access the back of his property by coming from Meridian to Moon Vista. As far as the arroyo that crossed his property from north to south, he could have done something on his property to go from the front of it to the back. Loeks owned parcel#100-12-032D&E and McCusker owned parcel#100-12-029C. The access that Bernal sought was between parcel# 100-12-032E (Loeks) and parcel# 100-12-029C (McCusker). If an access road didn't exist between Loeks and McCusker's property prior to Bernal's request, I do not believe the Court of Appeal's judge would have ruled in favor of Bernal for any other reason than Bernal had a **private access right** granted to him under federal law. There is no rule in the Small Tract Act of 1938 that says a patentee has to travel a particular route; a patentee can access their property by any route as Bernal chose to do.

My question to Mr. Birnbaum is: Why did he think that Mr. Bernal was "land locked" in the normal sense of being typically "Land Lock" since he put so much emphasis on him being land locked?

Again, based on the Bernal case, one would have to reconsider the issue of allowing a patent easement to be blocked, impeded, or interfered with in any way. The patent easement remains of record at the BLM perpetually. Though Mr. Birnbaum doesn't believe that there is any case law regarding private access and property rights, why did the title company defend Mr. Bernal's private access and property rights? The plat map of Mr. Bernal's area doesn't show him land locked.

Personally, I feel that each CC member now has a much better understanding of GLO patent easements.

Thank you,

John S. Also
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From : John <jsaleo@msn.com>

Inbox

Sent : Sunday, March 6, 2005 10:47 AM

To : "City Council" <citycouncil@scottsdaleaz.gov>, "Ian Dolan" <idolan@scottsdaleaz.gov>, "Joseph Bertoldo" <jbertoldo@scottsdaleaz.gov>

Subject : Another Viewpoint on GLO Federal Patent Easements

Attachment : image001.jpg (< 0.01 MB), jones_osborn_ii.pdf (0.19 MB)

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X-Originating-Fmail: [jsaleo@msn.com]

X-Sender: jsaleo@msn.com

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I suggest that you read these memos prepared by Jones Osborn II by going to this link: <http://www.omlaw.com/updates-memos-3.htm>. Mr. Osborn is a respected real estate attorney. Attached is a PDF file describing his credentials. I believe that he has a somewhat different opinion than Mr. Birnbaum. Mr. Osborn's description of title insurance policies is important.

It would appear that a property owner who has a federal patent easement on their property and their beneficial interest passes with the deed should strongly consider an Extended Title Policy to be appropriately protected from federal patent easement abuses, i.e., the blocking, impeding or interfering of said easements. By allowing a patent easement to be removed from the new plat of survey, makes it difficult to alert these new property owners as to potential ramifications.

This information is not to discredit Mr. Birnbaum's opinion, but to demonstrate another opinion. Mr. Birnbaum is a well respected real estate attorney. I personally have the utmost respect for Mr. Birnbaum.

Now that the issue has been isolated, perhaps it would be wise to seek an opinion from the Attorney General, a proper authority, to be on the safe side as to the CC actions. The request would be: Does the affected parties (patentees and/or subsequent owners) of a GLO federal patent easement created under the Small Tract Act of 1938, since repealed which said easement traverses over their property have a beneficial interest in same that extends to a private access and property right perpetually which cannot be denied? It's free. Why not do it? Why wait for another case law that may explicitly demonstrate that said rights exist? What position would the city be in assuming that they were a party to abusing said rights by issuing building permits to applicants to erect a permanent structure onto said easements without proper disclosure to the public?

Again, you did a great job with the study session. Very impressive!

Thank you,

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